

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

MONDAY, THE 10TH DECEMBER 2007 / 19TH AGRAHAYANA 1929

Bail Appl..No. 7358 of 2007()

CRIME NO.360/07 OF WADAKKANCHERRY POLICE STATION

: APPLICANT/ACCUSED

JIJESH A.P.
AGED 24, S/O.POULOSE
ARAKKAL HOUSE, AYYUPARA,
KUDUKKAD P.O., THALAPPILLY TALUK
THRISSUR DISTRICT.

BY ADV. SRI.P.VIJAYA BHANU
SRI.M.REVIKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED
BY PUBLIC PROSECUTOR
HIGH COURT OF KERALA
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZAR

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION
ON 10/12/2007, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

R.BASANT, J

B.A.No.7358 of 2007

Dated this the 10th day of December, 2007

ORDER

Application for anticipatory bail. Petitioner faces allegations for offences punishable under Section 376 I.P.C and Section 3(2) (v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

2. The crux of the allegations against the petitioner is that he was in love with the defacto complainant and did have sexual course with her on a number of occasions at his house as well as at her house in the absence of the others. The defacto complainant became pregnant. According to her, later, the petitioner did not continue the relationship. She hence alleged that the petitioner has committed the offence of rape punishable under Section 376 I.P.C. There was a further allegation that as the defacto complainant belongs to the Scheduled Caste and the petitioner does not belong to the Scheduled Caste, the same offence attracts the punishment under Section 3(2)(v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

3. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. There is no element of the

offence of rape even if the entire allegations are accepted. He further submits that the allegation under Section 3(2)(v) of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act though shown in the F.I.R is not attracted at all and the mere inclusion of the said section in the F.I.R cannot in any way fetter the discretion of this Court to grant anticipatory bail under Section 438 Cr.P.C.

4. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that the allegation under Section 376 I.P.C is validly raised and that, at any rate, in view of Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act, application for anticipatory bail in this crime is not justified or sustainable.

5. I shall first consider the allegation under Section 376 I.P.C. I shall carefully avoid any detailed discussion about the acceptability of the allegations or the credibility of the data collected. Suffice it to say that on an anxious consideration of all the relevant inputs, I find merit in the submission of the learned counsel for the petitioner that the petitioner is entitled for

anticipatory bail for the offence punishable under Section 376 I.P.C. In coming to this conclusion, I need only mention that I have considered the rival contentions and perused the case diary exhaustively. The petitioner and the defacto complainant allegedly fell in love. They had opportunities to meet each other when the petitioner as an employee of a local convent, came to the shop to purchase the articles. There was consensual sexual intercourse between the petitioner and the defacto complainant at the house of the petitioner as well as the residence of the defacto complainant. The lovers were allegedly caught by some local persons who informed the mother of the victim. There allegedly was a discussion and negotiation. the defacto complainant had become pregnant also. The petitioner did not agree to marry her. I am satisfied that the long consensual sexual intercourse between the parties which is indicated cannot at the moment justifiably be dubbed as instances of rape.

6. The only other question to be considered is whether Section 18 would bar the claim for anticipatory bail in so far as the offence under Section 3(2)(v) Scheduled Castes/Scheduled Tribes

(Prevention of Atrocities) Act is concerned. There is no allegation that Section 3(1)(xii) is attracted to the facts of the case. The mere fact that a section under the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act has been shown in the F.I.R will not justify the contention of bar under Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act. There is no allegation even that the alleged offence in this case - the allegations of offence of rape which I have already found is sustainable, was committed on the ground that the defacto complainant belongs to the scheduled caste. In that view of the matter, I agree with the learned Public Prosecutor that though the section of offence is shown in the F.I.R, the allegations are not attracted. Consequently the bar under Section 18 of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act will not apply.

7. In the result, the Bail Application is, allowed. The following directions are issued under Section 438 Cr.P.C.

i) The petitioner shall appear before the learned Magistrate at 11 a.m on 17.12.2007. He shall be enlarged on

regular bail on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) with two solvent sureties each for the like sum to the satisfaction of the learned Magistrate;

ii) The petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 1 p.m on 18.12.2007 and 19.12.2007. During this period, the petitioner can be interrogated in custody and all steps necessary for the conduct of a proper investigation including the conduct of the potency test can be carried out. Thereafter the petitioner shall make himself available for interrogation before the Investigating Officer between 10 a.m and 12 noon on all Mondays and Fridays for a period of two months and subsequently as and when directed by the Investigating Officer in writing to do so;

iii) If the petitioner does not appear before the learned Magistrate as directed in clause (i), directions issued above shall thereafter stand revoked and the police shall be at liberty to arrest the petitioner and deal with him in accordance with law as if those directions were not issued at all;

iv) If the petitioner were arrested prior to his surrender on 17.12.07 as directed in clause (1) above, he shall be released from custody on his executing a bond for Rs.25,000/- (Rupees Twenty Five thousand only) without any sureties undertaking to appear before the learned Magistrate on 17.12.07.

(R.BASANT, JUDGE)

rtr/-